



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</b>	2 VAC 5-317
<b>Regulation title</b>	Regulations for Enforcement of the Noxious Weeds Law
<b>Action title</b>	Proposal to establish regulations to eradicate, suppress, and prevent the dissemination of noxious weeds in the Commonwealth
<b>Date this document prepared</b>	June 6, 2012

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.*

The proposed regulation seeks to eradicate, suppress, and prevent the dissemination of noxious weeds in the Commonwealth by (i) establishing a list of plants deemed by the Board of Agriculture and Consumer Services to be noxious weeds, (ii) prohibiting the movement of noxious weeds or articles capable of transporting noxious weeds into or within the Commonwealth, and (iii) identifying eradication activities for certain noxious weeds. This action is necessary to protect Virginia's natural and agricultural resources, including native plants, commercial crops, other desirable plants, livestock, surface waters, etc., from the detrimental impact of noxious weeds. If allowed to become established, noxious weeds can grow rapidly, are typically harmful to the local environment, and can lead to significant economic losses due to associated eradication and control costs.

### Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

"Board" means the Board of Agriculture and Consumer Services.

“Commissioner” means the Commissioner of Agriculture and Consumer Services.

“Regulated article” means any listed noxious weed or any article or means of conveyance known to be infested or determined by an inspector to present a risk of spreading a listed noxious weed.

“VDACS” means the Virginia Department of Agriculture and Consumer Services.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.*

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Section 3.2-109 of the *Code of Virginia* (Code) authorizes the Board to adopt regulations in accordance with Title 3.2 of the Code regarding agriculture, animal care, and food.

VDACS administers the provisions of the Noxious Weeds Law (Law) (Va Code § 3.2-800 et seq.). Section 3.2-802 of the Law authorizes the Board to establish regulations under which certain plants can be listed as noxious weeds. Moreover, the Board may adopt regulations pertaining to regulated articles and conditions for their movement, under which the Commissioner may proceed to conduct eradication or suppression activities to prevent the dissemination of noxious weeds in the Commonwealth. The Board may also adopt regulations governing the movement of regulated articles entering the Commonwealth from other locations. This authority is discretionary.

On May 24, 2012, the Board proposed 2 VAC 5-317, *Regulations for Enforcement of the Noxious Weeds Law*.

## Purpose

*Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.*

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The proposed regulation is necessary to protect the Commonwealth’s agricultural and natural resources from the detrimental impact of noxious weeds. Listed noxious weeds are non-native exotic plants with very few or no natural predators or existing environmental conditions to control their rapid rate of growth. As a result, noxious weeds can grow rapidly and displace native plants. In addition, the habitat of wildlife can be altered as these plants invariably change the ecosystem by out-competing and displacing native plants.

Eradication of noxious weeds may not be feasible once populations have become established and widespread. This regulation will allow the Commonwealth to conduct activities to prevent the establishment of listed noxious weeds in Virginia. As the establishment of a noxious weed can lead to significant economic losses due to associated eradication and control costs, this regulation will also assist in protecting the economic welfare of citizens.

## Substance

*Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)*

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The proposed regulation establishes two tiers of noxious weeds. The distinction between the two tiers of noxious weeds is whether eradication of the listed plants is likely. The regulation provides that the Commissioner may conduct eradication or suppression activities to prevent the dissemination of a Tier 1 noxious weed. Tier 2 weeds are those for which successful suppression is feasible, but for which eradication is unlikely.

Under the proposed regulation, the movement of a listed noxious weed or any article known to be infested with a noxious weed is prohibited, unless VDACS issues a certificate or permit for the movement of the noxious weed. The regulation also establishes conditions under which VDACS may issue a certificate or permit.

The regulation provides a list of eradication or suppression activities the Commissioner may conduct to prevent the dissemination of a Tier 1 noxious weed.

The regulation establishes a Noxious Weeds Advisory Committee to advise the Commissioner on those plants it recommends for declaration as noxious weeds or for delisting.

## Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.*

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The primary advantage of the proposed regulation is the protection of the Commonwealth's agricultural and natural resources from the detrimental impact of noxious weeds. The proposed regulation poses no disadvantages to the public or the Commonwealth.

The agency anticipates implementing a science-based assessment of possible plants for listing as noxious weeds which will facilitate consensus among affected interest groups.

## Requirements more restrictive than federal

*Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

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The federal Noxious Weed Regulations establish a list of noxious weeds whose interstate movement is prohibited without a permit (7 CFR Part 360). Of the eight noxious weeds proposed in 2 VAC 5-317, the following are also included on the federal Noxious Weed List: giant salvinia, tropical soda apple, giant hogweed, cogongrass, and water-spinach.

There are no federal requirements similar to those of the proposed regulation that prohibit the intrastate movement of a noxious weed and establish the suppression and eradication activities that the Commissioner may conduct to prevent the dissemination of a noxious weed in the Commonwealth.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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The restriction on the movement of the noxious weeds listed in the proposed regulation applies throughout the Commonwealth. However, Virginia has a diverse landscape and each noxious weed may be more likely to grow in one region of Virginia than another. Regardless of the locality in which the noxious weed is present, no local government within the Commonwealth will be required to incur any costs associated with the suppression or eradication of the noxious weed.

**Public participation**

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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In addition to any other comments, the agency is seeking comments on the costs, benefits, and the potential impacts of this regulatory proposal. Also, the agency is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website, [www.townhall.virginia.gov](http://www.townhall.virginia.gov), or by mail, email, or fax to:

Erin Williams, Policy and Planning Coordinator  
 Division of Consumer Protection  
 Virginia Department of Agriculture and Consumer Services  
 P.O. Box 1163  
 Richmond, VA 23218  
 Telephone: (804) 786-1308  
 Fax: (804) 371-7479  
 E-mail: [Erin.Williams@vdacs.virginia.gov](mailto:Erin.Williams@vdacs.virginia.gov)

Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirements creates the anticipated economic impact.*

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.</b></p>	<p>The agency is not able to estimate the costs associated with the implementation and enforcement of the proposed regulation, as such costs are dependent upon various factors such as the identification of a listed noxious weed within the Commonwealth, the location and extent of the noxious weed infestation, and the unique characteristics of a noxious weed that may make it difficult to eradicate.</p>
<p><b>Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.</b></p>	<p>No local government within the Commonwealth will be required to incur any costs associated with the suppression or eradication of the noxious weed.</p>
<p><b>Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.</b></p>	<p>Landowners will benefit from the restrictions on the movement of noxious weeds as these restrictions will minimize the potential that a noxious weed will become established on their land and consequently impact their use of the land or its value.</p>
<p><b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The agency is not able to estimate the number of landowners who will benefit from this regulation that will assist in preventing the introduction of a noxious weed to their land. The agency does not believe any small businesses will be affected by the proposed regulation.</p>
<p><b>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</b></p>	<p>The agency is not able to estimate the costs associated with the proposed regulation, as such costs are dependent upon various factors such as the identification of a listed noxious weed within the Commonwealth, the location and extent of the noxious weed infestation, and the unique characteristics of a noxious weed that may make it difficult to eradicate.</p>
<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The proposed regulation is intended to protect the Commonwealth’s agricultural and natural resources from the detrimental characteristics of noxious weeds.</p>

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**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

The Commissioner of VDACS is authorized under the Virginia Plant Pest Law (Va Code § 3.2-700 et seq.) to carry out operations to locate, suppress, control, eradicate, prevent, or retard the spread of plant pests. The Plant Pest Law also allows the Commissioner to quarantine sections of the Commonwealth to limit the movement of regulated articles that are capable of transporting plant pests of concern. However, the Plant Pest Law does not authorize the Commissioner to limit the movement or eradication of noxious weeds which negatively impact other natural resources such as surface waters, livestock, land, or other property. No other viable alternative exists that will protect these other valuable resources in a cost-effective manner.

**Regulatory flexibility analysis**

*Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The restriction of the movement of a listed noxious weed is necessary to prevent its dissemination in the Commonwealth. The proposed certificate and permit requirements for the movement of regulated articles are identical to the certificate and permit requirements found in other quarantines established by the Commissioner and represent the minimum requirements necessary to ensure that any permitted movement of a regulated article will not result in the spread of a noxious weed.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Lind	Thank you.	The agency thanks you for your acknowledgement.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The proposed regulation will not impact the institution of the family and family stability.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

<b>Section number</b>	<b>Proposed requirements</b>	<b>Other regulations and law that apply</b>	<b>Intent and likely impact of proposed requirements</b>
10	Definitions.	N/A	The definitions in this section provide clarification for the use of the terms throughout the regulation.
20	Tier 1 and Tier 2 noxious weeds.  This section establishes two tiers of noxious weeds.	N/A	The distinction between the two tiers of noxious weeds established in this section is whether the eradication of the listed plant species is likely. Tier 1 weeds are those for which successful eradication or suppression is likely. Tier 2 weeds are those for which successful suppression is feasible, but for which eradication is unlikely.
30	Conditions governing the intrastate movement of regulated articles.  This section prohibits the movement of any listed noxious weed or any article known to be infested with any	N/A	The prohibition on the movement of any regulated article is intended to protect the Commonwealth’s agricultural and natural resources from the detrimental impact of the listed noxious weeds.

	<p>listed noxious weed. Movement is permissible if the regulated article is accompanied by a certificate or permit.</p>		
40	<p>Issuance and cancellation of certificates and limited permits.</p> <p>This section provides for the issuance of a certificate or permit which allows the movement of a regulated article into, within, or out of the Commonwealth if certain conditions are met.</p>	N/A	<p>The provisions of this section will allow for the movement of regulated articles under circumstances that will not result in the spread of the noxious weed.</p>
50	<p>Assembly and inspection of regulated articles.</p> <p>This section establishes certain requirements for applying for a permit.</p>	N/A	<p>These requirements of this section assist with the efficient inspection and safeguarding of regulated articles.</p>
60	<p>Attachments and disposition of certificates and limited permits.</p> <p>This section establishes requirements for the attachment of a certificate or permit to the regulated article being moved, as well as requirements for the retention of a copy of the certificate or permit.</p>	N/A	<p>These requirements assist with tracking the movement of a regulated article.</p>
70	<p>Inspection and disposal of regulated articles.</p>	<p>Virginia Noxious Weeds Law (Va Code § 3.2-800 et seq.)</p>	<p>This section reiterates the Commissioner’s authority pursuant to the Virginia Noxious Weeds Law to seize, destroy, or otherwise dispose of regulated articles in order to prevent the introduction or dissemination of noxious weeds.</p>
80	<p>Eradication and suppression activities for Tier 1 noxious weeds.</p> <p>This section establishes the activities the Commissioner may conduct in response to the discovery of a Tier 1 noxious weed.</p>	N/A	<p>Tier 1 noxious weeds are those for which successful eradication or suppression is likely. This section includes specific activities that will assist in facilitating with suppression or eradication of Tier 1 noxious weeds in order to prevent their dissemination.</p>
90	<p>Non-liability of the department.</p>	N/A	<p>This section is intended to clarify that the department will not be</p>

	<p>This section establishes that the department is not liable for costs incurred by third parties as a result of, or incidental to, inspections required under this regulation.</p>		<p>responsible for costs arising from required inspections.</p>
100	<p>Noxious Weeds Advisory Committee.</p> <p>This section establishes a committee to advise the Commissioner on plants that should be considered by the Board for inclusion on or delisting from the noxious weeds list.</p>	N/A	<p>A committee comprised of representatives from various state agencies and environmental and industry groups will assist in the science-based analysis of potential plant species for inclusion on or delisting from the noxious weeds list.</p>